BEFORE THE MEDICAL BOARD OF CALIFORNIA DIVISION OF MEDICAL QUALITY DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

Against:)		
THOMAS J. TUCHSCHER, M.D. Physician & Surgeon Cert. No. A-20716 Respondent	No. 10-97-74247)))))))		
	<u>DECISION</u>		
The attached Stipulation for Surren	der of License in case number 10-97-74247 is hereby		
adopted by the Division of Medical Quality	y of the Medical Board of California as its decision in		
the above entitled matter.			
This Decision shall become effective	ve on <u>May 20, 1998 — — — — — — — — — — — — — — — — — — </u>		
It is so Ordered <u>May 13.</u>	1998		

DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA

CAROLE HURVITZ, M.D. Chairperson, Panel B

DANIEL E. LUNGREN, Attorney General 1 of the State of California 2 STEVEN H. ZEIGEN, Deputy Attorney General 3 Department of Justice 110 West A Street, Suite 1100 Post Office Box 85266 4 San Diego, California 92186-5266 Telephone: (619) 645-2074 Attorneys for Complainant 6 8 BEFORE THE DIVISION OF MEDICAL QUALITY 9 MEDICAL BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS 10 STATE OF CALIFORNIA 11 In the Matter of the Accusation Case No. 10-97-74247 Against: 12 THOMAS J. TUCHSCHER, M.D. 1630 "C" Seacoast Dr. STIPULATION FOR 13 Imperial Beach, CA 92032 SURRENDER OF LICENSE 14 3633 Bonita Verde Dr. 15 Bonita, CA 91902 16 Physician's and Surgeon's Certificate No. A20716 17 Respondent. 1.8 19 IT IS HEREBY STIPULATED AND AGREED by and between the 20 parties to the above-entitled proceedings that the following 21 matters are true: 22 Complainant, Ron Joseph, is the Executive Director 23 of the Medical Board of California, Department of Consumer 24 Affairs ("Board") and is represented by Daniel E. Lungren, 25 Attorney General of the State of California by Steven H. Zeigen, 26 Deputy Attorney General. 27 111

2. Thomas J. Tuchscher, M.D. ("respondent") is represented in this matter by Thomas C. Tuchscher, Jr., who having power of attorney over the affairs of respondent, has the power, inter alia, to "deal with any government entity . . . " (Para. 4 (H) of Durable Power of Attorney, a copy of which is attached to this document.)

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- 3. Mr. Tuchscher has received and read the Accusation which is presently on file and pending in Case No. 10-97-74247 before the Division of Medical Quality of the Board ("Division"), a copy of which is attached as Exhibit A and incorporated herein by reference.
- 4. Mr. Tuchscher understands the nature of the charges alleged in the Accusation and that, if proven at hearing, such charges and allegations would constitute cause for imposing discipline upon respondent's license issued by the Board.
- 5. Mr. Tuchscher is aware of each of his rights, including the right to be represented by counsel, the right to a hearing on the charges and allegations, the right to confront and cross-examine witnesses who would testify against respondent, the right to testify and present evidence on his own behalf, as well as to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to contest the charges and allegations, and other rights which are accorded respondent pursuant to the California Administrative Procedure Act (Gov. Code, § 11500 et seq.) and other applicable laws, including the right review by the superior court and appellate review.

- 6. Respondent is sixty-six years old, has suffered from narcotic addiction and debilitating diabetes, among other afflictions, which makes his practice of medicine impossible. In light of the circumstances surrounding the allegations in the instant accusation, it is in respondent's best interests to terminate this matter. Accordingly, Mr. Tuchscher, on behalf of respondent, chooses to surrender respondent's license to practice medicine in the State of California.
- 7. Mr. Tuchscher understands that by signing this Stipulation he is enabling the Division of Medical Quality to issue its order accepting the surrender of his license without further process. He understands and agrees that Board staff and counsel for complainant may communicate directly with the Division regarding this Stipulation, without notice to or participation by Mr. Tuchscher. In the event this Stipulation is rejected for any reason by the Division, it will be of no force or effect for either party except for this paragraph. The Division will not be disqualified from further action in this matter by virtue of its consideration of this stipulation.
- 8. Upon acceptance of this Stipulation by the Division, Mr. Tuchscher agrees to cause to be delivered to the Division respondent's license and wallet certificate before the effective date of the Decision. Mr. Tuchscher further understands that, on or after the effective date of this Decision, respondent will no longer be permitted to practice as a physician or surgeon in California.

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9. Mr. Tuchscher fully understands and agrees that if respondent ever files an application for relicensure or reinstatement in the State of California, the Division shall treat it as a petition for reinstatement and respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and the allegations contained in Accusation No. 10-97-74247 will be deemed to be true, correct and admitted by respondent when the Division determines whether to grant or deny the petition.

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Moreover, pursuant to Code section 822, Mr. Tuchscher agrees respondent's license shall not be reinstated until the Division has received competent evidence, from Respondent's attending physician(s), that respondent's physical conditions have been remedied, and the Division is satisfied respondent can resume the practice of medicine without jeopardizing the public health and safety.

In accordance with Code section 823, before reinstating respondent's license, in addition to respondent's admitting the truth of the allegations in the accusation, the Division may impose any or all of the following conditions:

- (1) Require respondent submit to a complete diagnostic examination by one or more physicians and surgeons or psychologists appointed by the Division;
- (2) Require respondent to obtain additional professional training by taking and completing the PACE program at UCSD in an area involving proper prescribing;

- (3) Require respondent to pass an oral clinical examination to determine respondent's present fitness to practice medicine if he has not taken and passed the examination given as part of the PACE program;
- (4) Require respondent undergo continuing treatment;
- (5) Restrict or limit the extent, scope or type of respondent's practice, including placing respondent's certificate in a probationary period of no greater than three years.
- 10. Mr. Tuchscher understands and agrees that if respondent ever files an application for relicensure or reinstatement, respondent will reimburse the Division the amount of \$2,500.00 as the costs of investigation and prosecution of this matter. Unless otherwise agreed by the Division, such reimbursement shall be paid in full prior to the processing of the application for relicensure or reinstatement. In addition, the Division may enforce payment as provided by Taw. The filing of bankruptcy by the respondent shall not relieve respondent of his responsibility to reimburse the Division for its investigative and prosecution costs.
- 11. All admissions and recitals contained in this Stipulation are made solely for the purpose of settlement in this proceeding and for any other proceedings in which the Division is involved, and shall not be admissible in any other criminal or civil proceedings.

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ACCEPTANCE

I, Thomas C. Tuchscher, Jr., having power of attorney to settle matters on behalf of respondent before governmental entities, have carefully read the above stipulation and enter into it freely and voluntarily, and with full knowledge of its force and effect, do hereby surrender respondent's Physician's and Surgeon's Certificate No. A 20716 to the Division of Medical Quality, Medical Board of California for its formal acceptance. By signing this stipulation to surrender respondent's license, I recognize that upon its formal acceptance by the Division, respondent will lose all rights and privileges to practice as a physician and surgeon in the state of California.

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DATED:	7-10	70	

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Thomas C. Tuckscher,

Power of Attorney for Respondent Thomas J. Tuchscher

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DATED:

DANIEL E. LUNGREN, Attorney General

of the State of California

STEVEN H. ZEIGEN

Deputy Attorney General

Attorneys for Complainant

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Exhibit A: Accusation

26 Exhibit B: Power of Attorney

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EXHIBIT "A"



DANIEL E. LUNGREN, Attorney General of the State of California STEVEN H. ZEIGEN, (State Bar No. 60225) Deputy Attorney General California Department of Justice 3 110 West A Street, Suite 1100 Post Office Box 85266 San Diego, California 92186-5266 Tel. No. (619) 645-2074

Attorneys for Complainant

Office of Administrative Hearings SAN DIEGO

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BEFORE THE DIVISION OF MEDICAL QUALITY MEDICAL BOARD OF CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA

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Case No. 10-97-74247 In the Matter of the Accusation Against: ACCUSATION THOMAS J. TUCHSCHER, M.D. 1630 "C" Seacost Drive, Imperial Beach, California 92032 3633 Bonita Verde Dr. Bonita, Ca 91902 Physician's and Surgeon's Certificate No. A20716,

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The Complainant alleges:

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PARTIES

Complainant Ronald Joseph, is the Executive

Respondent.

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capacity as such.

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- 2. On or about July 1, 1963, Physician's and
 - Surgeon's Certificate No. A20716 was issued by the Board to

Director of the Medical Board of California (hereinafter the

"Board"), and brings this Accusation solely in his official

27 Thomas J. Tuchscher, M.D. (hereinafter "respondent"), and at all times relevant to the charges brought herein, this certificate was in full force and effect. The certificate is currently delinquent, having expired on January 31, 1998.

JURISDICTION

- 3. This Accusation is brought before the Division of Medical Quality of the Medical Board of California, Department of Consumer Affairs (hereinafter the "Division"), under the authority of the following sections of the California Business and Professions Code (hereinafter "Code"):
 - A. Section 2227 of the Code provides that the Board may revoke, suspend for a period not to exceed one year, or place on probation, the license of any licensee who has been found guilty under the Medical Practice Act.
 - B. Section 2234 of the Code provides that unprofessional conduct includes, but is not limited to, the following:
 - "(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision of this chapter.
 - (b) Gross negligence.
 - (c) Repeated negligent acts.
 - (d) Incompetence."
 - C. Section 2239 subdivision (a), provides that the self-use of any dangerous drug to the extent it is used in such a manner as to become dangerous to the public, or impairs the ability of the licensee to practice medicine

- safely, constitutes unprofessional conduct.

- D. Section 2241 provides that the prescribing, selling, furnishing, giving away, et al., of any controlled substance to an addict is unprofessional conduct. (See also Health & Safety Code Section 11156).
- E. Section 2242 provides that prescribing, dispensing, or furnishing of any dangerous drug without a good faith prior examination and medical indication is unprofessional conduct. (See also Health & Safety Code section 11355).
- F. Section 125.3 of the Code provides, in part, that the Board may request the Administrative Law Judge to direct any licentiate found to have committed a violation or violations of the licensing act, to pay the Board a sum not to exceed the reasonable costs of the investigation and enforcement of the case.
- 4. Section 16.01 of the 1997/1998 Budget Act of the State of California provides, in pertinent part, That: (a) no funds appropriated by this act may be expended to pay any Medi-Cal claim for any service performed by a physician while that physician's license is under suspension or revocation due to a disciplinary action of the Medical Board of California; and, (b) no funds appropriated by this act may be expended to pay any Medi-Cal claim for any surgical service or other invasive procedure performed on any Medi-Cal beneficiary by a physician if that physician has been placed on probation due to a disciplinary action of the Medical Board of California related to the

performance of that specific service or procedure on any patient, except in any case where the board makes a determination during its disciplinary process that there exist compelling circumstances that warrant continued Medi-Cal reimbursement during the probationary period.

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FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

- 5. Respondent has subjected his license to disciplinary action under California Business and Professions Code sections 2227 and 2234, on the grounds of unprofessional conduct as defined by section 2234, subdivision (b) of the Code, as more particularly alleged hereinafter:
 - (a) In February 1997 a confidential informant told San Diego police officer Karen Zawacki respondent lived at the residence of 1630 C, Seacoast Drive, Imperial Beach with a Karla Serrano, who was supplying respondent heroin. Serrano was said to be selling methamphetamine and heroin from that residence, and along with respondent, writing prescriptions on respondent's prescription pads and selling them.
 - (b) On March 19, 1997, undercover San Diego police detective, Greg Hewitt, went to respondent's residence. He met respondent and asked if respondent could write him a prescription for Valium. Hewitt told respondent he was using heroin. Hewitt asked if respondent could get him some heroin, but respondent said he only kept enough with him for personal use. Respondent offered to introduce

Hewitt to his supplier. Respondent wrote the prescription for Hewitt for Valium. At no time did respondent ever conduct a physical examination, nor did respondent charge Hewitt for the prescription.

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- (c) On May 14, 1997, Hewitt returned to respondent's residence, where respondent wrote him a prescription for Tylenol #3 with codeine, a schedule 3 controlled substance. Again respondent conducted no physical examination of Hewitt.
- (d) On or about April 14, 1997, respondent checked himself into Paradise Valley Hospital for prescription opiate dependency, major depressive disorder, and other physical ailments. He stayed in the hospital, participating the in the Chemical Dependency Inpatient Program until his discharge on May 5, 1997. He informed the hospital of his willingness to continue in the Partial Hospital Chemical Dependency Program.
- (e) On July 23, 1997, respondent was interviewed by Medical Board Investigator Hughlane McMillan at respondent's residence. Respondent claimed he had not practiced for more than ten years and, initially, denied writing any prescriptions to anyone without medical indication. Respondent was informed by McMillan he had been recorded talking about his heroin use and writing prescriptions to an undercover policeman. Later that same day, respondent called

McMillan, sounded like he was crying, and asked for help with his drug problem.

- (f) On July 24, 1997, McMillan returned to respondent's home to have him sign a "Statement of Understanding" and obtain a urine sample to be tested for drugs. Respondent said he had changed his mind after speaking with his attorney. He denied having a drug problem, and denied the need to participate in the diversion program.
- (g) On or about August 6, 1997, respondent admitted himself to Scripps Memorial Hospital. When his requests for increasing amounts of Vicodin were refused, against medical orders he signed himself out of the hospital.
- (h) Respondent was scheduled for a physician interview on December 5, 1997, for which he did not show up. Respondent's son called and said respondent was hospitalized, but would call McMillan after his discharge. McMillan received no response, and called and spoke with respondent on January 8, 1998, at which time another appointment was made for January 23, 1998. Respondent failed to keep that appointment as well. McMillan spoke with respondent's mother, who said he had checked himself into a hospital just a couple of days prior.
- (i) Respondent committed gross negligence through his personal use of opiates which clearly has clouded

his judgment. The ingestion of heroin, or any opiate, as a matter of personal use is an extreme departure from the standard of care.

SECOND CAUSE OF DISCIPLINE

(Unlawful Use of Dangerous Drugs)

- 6. Respondent has further subjected his license to disciplinary action under California Business and Professions Code sections 2227 and 2234, on the grounds of unprofessional conduct as defined by section 2239, subdivision (a) of the Code, as more particularly alleged hereinafter:
 - (a) Complainant incorporates by reference the allegations set forth in paragraph 5 (a) through (h), supra.
 - (b) Respondent unlawfully used dangerous drugs within the meaning of section 2239. Heroin or prescription opiate usage adversely affects one's judgement, as well as one's ability to perceive.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Drugs to an Addict)

- 7. Respondent has further subjected his license to disciplinary action under California Business and Professions Code sections 2227 and 2234, on the grounds of unprofessional conduct as defined by section 2241, of the Code, as more particularly alleged hereinafter:
 - (a) Complainant incorporates by reference the allegations set forth in paragraph 5 (a) through (h), supra.
 - (b) Respondent prescribed Valium, a schedule IV, and Tylenol #3. a schedule III drug to undercover

detective Hewitt, after respondent had been informed by the undercover detective he was using heroin.

FOURTH CAUSE OF DISCIPLINE

(Prescribing Without a Good Faith Prior Examination)

- 8. Respondent has further subjected his license to disciplinary action under California Business and Professions Code sections 2227 and 2234, on the grounds of unprofessional conduct as defined by section 2242, of the Code, as more particularly alleged hereinafter:
 - (a) Complainant incorporates by reference the allegations set forth in paragraph 5 (a) through (h), supra.
 - (b) Respondent prescribed Valium, a schedule IV controlled substance, and Tylenol #3, a schedule III controlled substance, to undercover detective Hewitt without ever performing any semblance of a physical examination.

FIFTH CAUSE OF DISCIPLINE

(General Unprofessional Conduct)

- 9. Respondent has further subjected his license to disciplinary action under California Business and Professions Code sections 2227 and 2234, on the grounds of general unprofessional conduct as defined by section 2234 of the Code, as more particularly alleged hereinafter:
 - (a) Complainant incorporates by reference the allegations set forth in paragraph 5 (a) through (h), supra;
 - (b) The providing of prescriptions to the undercover detective, the admitting of his drug

problem, only to be followed by his denial, and his failure to keep his scheduled physician interviews with the Board are those unbecoming a member in good standing of the medical profession, and demonstrate an unfitness to practice medicine.

PRAYER

WHEREFORE, the complainant requests that a hearing be held on the matters alleged herein, and that following said hearing, that the Division issue a decision:

- Revoking or suspending Physician's and Surgeon's Certificate No. A20716, heretofore issued to respondent Thomas J. Tuchscher, M.D.;
- 2. Ordering respondent to pay the Division the actual and reasonable costs of the investigation and enforcement of this case; and
- 3. Taking such other and further action as the Division deems necessary and proper.

DATED: 3-16 - 58

Ronald Joseph

Executive Director

Medical Board of California
Department of Consumer Affairs

State of California

Complainant

SHZ:pll

Case No. 10-97-74247

EXHIBIT "B"

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DURABLE POWER OF ATTORNEY

WARNING TO PERSON EXECUTING THIS DOCUMENT

THIS IS AN IMPORTANT LEGAL DOCUMENT. IT CREATES A DURABLE POWER OF ATTORNEY. BEFORE EXECUTING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:

- A. THIS DOCUMENT MAY PROVIDE THE PERSON YOU DESIGNATE AS YOUR ATTORNEY IN FACT WITH BROAD POWERS TO DISPOSE, SELL, CONVEY AND ENCUMBER YOUR REAL AND PERSONAL PROPERTY.
- B. THESE POWERS WILL EXIST FOR AN INDEFINITE PERIOD OF TIME UNLESS YOU LIMIT THEIR DURATION IN THIS DOCUMENT. THESE POWERS WILL CONTINUE TO EXIST NOTWITHSTANDING YOUR SUBSEQUENT DISABILITY OR INCAPACITY.
- C. YOU HAVE THE RIGHT TO REVOKE OR TERMINATE THIS DURABLE POWER OF ATTORNEY AT ANY TIME.
- 1. Appointment of Attorney in Fact. I, THOMAS TUCHSCHER, hereby appoint THOMAS TUCHSCHER, JR. of Chula Vista, CA, as my lawful attorney in fact, to act for me and in my place and stead.
- 2. Appointment of successors. If the person appointed as attorney in fact should at any time be unable or unwilling to act or continue to act as attorney in fact, then I designate the following successors in the following order as my attorney in fact:

FIRST SUCCESSOR AGENT:

None.

- 3. <u>Effect of subsequent incapacity</u>. This power of attorney shall not be affected by the subsequent incapacity of the principal.
- 4. <u>Authority</u>. This power of attorney includes the following authority:
- A. To ask for and demand, to compromise or compound, to collect and receive any sum of money, whether a debt, account, legacy, bequest, or interest, dividend or annuity, belonging to or claimed by me, to use any lawful means of recovery by legal process or otherwise, and to execute and deliver a release on receipt;
- B. As to interests in real property: To contract for, purchase, receive, and take possession of the property and any evidence of title; to lease the property for any term or purpose,

including business, residential, or oil and gas or other mineral development; to sell or exchange the property with or without warranty; to transfer the property in trust; and to encumber the property to secure the payment of any obligation;

- C. As to personal property, chooses in action and other property or interests: To contract for, buy, sell, exchange, transfer, and in any other legal manner to deal with the property; to transfer in trust; and to encumber the property to secure the payment of any obligation;
- p. To borrow money and to execute negotiable or non-negotiable notes in exchange, with or without security; and to loan money and receive negotiable or non-negotiable notes in exchange, with such security as the attorney in fact deems proper;
- E. Corporate interests: To represent the principal in the principal's corporate interests, and to vote stock, exercise stock rights, and accept and deal with dividends, distributions or bonuses;
- F. To transact business of any kind and to execute and deliver any bill of lading, bill of sale, bond, note evidence of debt, release, request for reconveyance, and any other instrument in writing necessary to the transaction of such business.
- G. To transact business with any financial institution, including but not limited to, access and control over all bank accounts, deposits, safe deposit boxes and the like.
- H. To deal with any government entity, including but not limited to re-routing the principal's mail.
- 5. Revocation. This durable power of attorney may be revoked as follows:
- A. In writing by Principal. This durable power of attorney shall remain in full force and effect until revoked by the principal in writing or as otherwise set forth herein.
- 6. Applicable to Real and Personal Property; Present and Future Interests. The powers and authority hereby conferred on my attorney in fact are applicable to all real and personal property and interests now owned or hereafter acquired by me, wherever situated.
- 7. <u>Authority of Attorney in Fact</u>. The attorney in fact has full authority to determine the manner of carrying out the above mentioned powers in the attorney in fact's sole discretion.

- 8. Attorney in Fact's actions binding on Principal. All acts done by the attorney in fact pursuant to this durable power of attorney shall have the same effect and inure to the benefit of, and bind, the principal and the principal's successors in interest as if the principal were competent at the time.
- A. In the event a third party refuses to honor this durable power of attorney, the principal authorizes the attorney-in-fact to seek injunctive relief or damages.

Dated: October 15, 1997

THOMAS TUCHSCHER

STATE OF CALIFORNIA)

ss:

COUNTY OF SAN DIEGO)

On October 15, 1997 before me, a notary public, personally appeared THOMAS TUCHSCHER personally known to me (or proved to me on the basis of satisfactory evidence), to be the person whose name is subscribed to this instrument, and acknowledged that said person executed it. I declare under penalty of perjury that the person whose name is subscribed to this instrument appears to be of sound mind and under no duress, fraud, or undue influence.



NOTARY PUBLIC

ATTORNEY CERTIFICATE

I am a lawyer authorized to practice law in the state where this power of attorney was executed, and the principal was my client at the time this power of attorney was executed. I have advised my client concerning my client's rights in connection with this power of attorney and the applicable law and the consequences of signing or not signing this power of attorney, and my client, after being so advised, has executed this power of attorney. I certify under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on October 15, 1997 at Chula Vista, California.

WILLIAM D. DALEY ESQ

Summary Statement

Curriculum Vitae for: Thomas J. Tuchscher

- Undergraduate Education: San Diego State University Graduated, 1956
- Medical School: University of California, Irvine Graduated, 1962
- Internship: Mercy Hospital 1962-1963
- 35 Years of Private Practice.
- 1980-1981 served in USA Lt. Colonel Commander: Spangdalem, Germany AFB Clinic

Thomas J. Tuchscher is currently married, in the process of divorce. He has five adult children and one minor child.

